

(1926) 10 BOM CK 0014
In the Bombay High Court
Case No : O.C.J. Suit No. 642 of 1926

Jetha Devji and Co.

APPELLANT

Vs

Durgadutt Ramnivas

RESPONDENT

Date of Decision : 11-10-1926

Acts Referred:

Citation : AIR 1927 Bom 365 : (1927) 29 BOMLR 416

Hon'ble Judges : Mirza, J

Bench : Single Bench

Judgement

Mirza, J.—The plaintiffs have attached a deposit of Rs. 5;000 made by the defendant with the East India Cotton Association of which he is a member under certain articles of the Association. Plaintiffs are judgment creditors for Rs. 3,418-9-0, interest thereon and costs of the suit. They have served a prohibitory order on the East India Cotton Association under the provisions of Order XXI, Rule 46. They have also taken out a garnishee notice calling upon the East India Cotton Association to pay to the Sheriff of Bombay Rs. 5,000 attached in their hands on or before September 30, 1926, or to appear in Court to show cause why they should not make the deposit. The East India Cotton Association have appeared on that notice and shown cause against it. They point out that under the clauses of their Articles of Association relating to such deposits they have absolute control over them as long as the depositor continues to be a member of the Association. The deposit carries interest at five per cent, per annum is liable to be forfeited, and is subject to satisfaction of certain liens of the Association and of its other members upon it. It is to be refunded to the member within twelve months with interest after he has ceased to be a member for any cause. Mr. Engineer for the plaintiffs contends that the deposit is property over which the debtor has power of disposal and is therefore liable to be attached under the provisions of the Code of Civil Procedure.

2. That the plaintiffs have a right to attach the debtor's interest in the deposit there can, in my opinion, be no doubt. But the question whether the attaching

creditor is entitled on these proceedings to compel the debtor to resign his membership of the Association so as to make the deposit subject to the liens, if any, on it payable to him within twelve months of such resignation is one on which I am not in agreement with the plaintiffs' contention. The plaintiffs will be at liberty to continue the attachment under Order XXI, Rule 46, but the garnishee notice they have taken out should, in my opinion, be discharged with costs. Counsel certified. The costs to be paid by the attaching creditor to the garnishee as well as his own costs will be tacked on to his costs in execution subject to any objection that the debtor may hereafter urge.